

# ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Haynes et al. Analyst: Roger Lackey Bill Number: SB 1286

Related Bills: See Legislative History Telephone: 845-3627 Amended Date: 03-06-2002

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Net Operating Loss Deduction -- Tourism Industry

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended \_\_\_\_\_.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED  
January 16, 2002, STILL APPLIES.

☒ OTHER - See comments below.

## SUMMARY

This bill would allow a special net operating loss (NOL) for taxpayers in the tourism industry.

## SUMMARY OF AMENDMENTS

The March 6, 2002, amendments deleted the earlier version of the bill that would have conformed state NOL treatment to federal treatment. The amendments added new provisions that would allow a 100% NOL for a limited period for taxpayers in the tourism industry.

As a result of the amendments, a new THIS BILL section and new implementation considerations are included below. The earlier implementation considerations and policy considerations no longer apply. The remainder of the department's analysis of the bill as introduced January 16, 2002, still applies.

## POSITION

Pending.

## THIS BILL

This bill would allow qualified taxpayers in the tourism industry an NOL equal to their federal NOL. This special NOL would apply only to losses incurred on or after September 1, 2001, and on or before December 31, 2001. The special NOL would be treated as if incurred during the taxable year

Board Position:

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Department Director

Date

Alan Hunter for GHG

03/28/02

beginning on or after January 1, 2002.

This bill would define “qualified taxpayer” as a taxpayer engaged in a business in the tourism industry.

This bill would define “tourism industry” to include the following:

- overnight accommodation facilities,
- restaurants and other eating establishments,
- recreational facilities including movie theaters, amusement parks, museums, and other tourist attractions, and
- transportation and travel services.

### IMPLEMENTATION CONSIDERATIONS

Taxpayers that incurred a loss from September 1, 2001, through December 31, 2001, would have already calculated their general California NOL for the 2001 taxable year. This bill does not require the taxpayer to reduce its general California NOL by the special NOL that would be allowed by this bill. As a result, a taxpayer would receive a double benefit, both their general NOL and the special NOL.

If the author’s intent is not to allow the taxpayer a double benefit, each taxpayer will have to file an amended return adjusting its NOL for the 2001 taxable year. As a result of the necessary amendments, a taxpayer may end up not recognizing a loss for the 2001 taxable year, and may incur an additional tax liability instead.

Also, there would be practical problems for the taxpayer in computing the special NOL. Since some taxpayers may operate using a fiscal year, their taxable year may not have ended on December 31, 2001. This bill is silent about whether a fiscal year taxpayer would be expected to prematurely close their taxable year to calculate the special NOL proposed by this bill. Ideally this bill should specify any actions a taxpayer would be required to take in determining the special NOL.

This bill states that the special NOL would be treated as an NOL that was incurred on or after January 1, 2002. However, the bill is not specific that the special NOL be claimed as a 2002 taxable year NOL. As a result, it appears that a taxpayer could claim the special NOL in any taxable year after January 1, 2002.

The Personal Income Tax Law (PITL) provisions of the bill describe the tourism industry with the phrase, “includes the following businesses and services.” In contrast, the Corporation Tax Law (CTL) provisions describe the tourism industry with the phrase, “includes the following classifications within the tourism industry.” The PITL and CTL are inconsistent in describing the tourism industry. The bill should be amended to be consistent.

Further, the tourism industry meaning uses the term “includes.” “Includes” could be interpreted as not being inclusive. Consequently, businesses and services not listed in the bill could argue to be included within the meaning of “tourism industry.”

## **ECONOMIC IMPACT**

### Revenue Estimate

As amended March 6, 2002, this bill could have a revenue loss impact of up to \$200 million cumulatively over the initial three fiscal years. The estimate is based on the projected cumulative revenue loss for all industries with 100% NOL over the first three fiscal years. Because of the loose definition of tourism in this bill, and because a business would be allowed 100% carryover of all losses and not just those losses associated with tourism, it is assumed that the majority of businesses with losses would be able to avail themselves of the 100% carryover. With a more exclusive definition of tourism, the revenue loss could drop significantly.

## **LEGISLATIVE STAFF CONTACT**

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